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SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

G-P GYPSUM CORPORATION,

Respondent,

v.

STATE OF WASHINGTON, DEPARTMENT OF REVENUE,

Petitioner.

Supplemental Brief of Respondent – G-P Gypsum Corporation

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I. Introduction

G-P Gypsum's Supplemental Brief addresses three areas not able to be addressed in the Brief or Reply Brief of Appellant because they concern events subsequent to the filing of those briefs.

First, this brief discusses the majority and concurring opinions below. Both opinions hold that G-P Gypsum's taking of dominion and control of gas inside Washington and outside Tacoma was the taxable use for state and local use tax purposes. Therefore, under the facts presented by this case, the opinions below do not conflict and do not lead to any other potential conclusion.

Second, after the decision below was published a bill was introduced into the House seeking to amend the definition of "use" for gas use tax purposes. House Bill 1422 (attached and cited as Appendix A). The bill proposes that "use" with respect to gas be limited to the burning or storing of gas. In response to the bill, the Department of Revenue wrote that the bill codifies the Department's current interpretation of "use" in regards to gas. (Department of Revenue Fiscal Note to HB 1422, attached and cited as Appendix B). Thus, the Department's current interpretation of "use" is in conflict with the current statutory definition, the definition applied by the Court of Appeals.

Third, if the Department's current interpretation was correct and "use" meant only burning or storing of gas but not the first taking of dominion or control, the use tax would violate the commerce clause of the United States Constitution. As the Department did not previously claim that the definition of "use" in respect to gas for state and local use tax purposes was limited to burning and storing, G-P Gypsum did not previously have the opportunity to brief why such a definition would violate the Federal Constitution.

Consistent with RAP 13.7, this supplemental brief does not restate or otherwise summarize the arguments contained in G-P Gypsum's earlier briefs.

II. Argument

A. The Majority and Concurring Opinions Below Are Consistent. G-P Gypsum's Use of Gas Was Its First Taking of Dominion or Control.

The concurring opinion below¹ states that the majority "holds that for purposes of imposing a use tax on natural gas, the Legislature limited former RCW 82.12.010(2)'s definition of 'use' to mean only 'the first taking of dominion and control in Washington'." Concurring Opinion at

¹ *G-P Gypsum Corp v. Department of Revenue*, 144 Wn. App. 664, 183 P. 3d 1109 (2008) is the opinion below. The concurring opinion by J. Hunt begins on 144 Wn. App. at 672. Throughout this brief, we cite to the majority opinion as "Majority Opinion" and to the concurring opinion as "Concurring Opinion."

672-73. The concurrence's view is that "use" includes consumption and its ordinary meaning, both of which may also constitute the first taking of dominion and control. *Id.* at 673-674. Thus, it appears that the majority below limited use to the first taking of dominion and control and the concurrence includes use's ordinary meaning and actual consumption within the meaning of the term while recognizing that use as ordinarily defined and actual consumption may in certain circumstances be the first taking of dominion and control.

Both the majority and concurring opinions below agree that the first exercise of dominion and control is "use", and both agree that G-P Gypsum first "used" the gas at issue outside Tacoma when G-P Gypsum first exercised dominion and control over the gas after it entered the state.² Concurring Opinion at 674. "Accordingly, because [G-P] Gypsum ha[d] already 'used' the natural gas at Sumas before transporting it to its

² Thus, it is irrelevant to the outcome of this case whether or not use as ordinarily defined and/or actual consumption is included within the meaning of "use". An owner always exercises dominion and control over an item it owns no later than the moment in time that it consumes or otherwise puts to use the item. Thus, owners will always be subject to tax on their taking of dominion or control -- and not on their actual consumption or other use -- because the taking of dominion or control will always be their first use. The concurring opinion recognized that consumption or other uses may under certain circumstances, not present here, be the first exercise of dominion and control. Concurring Opinion at 673-674. The majority had no reason to reach that conclusion under the facts of this case. G-P Gypsum first took dominion and control over the gas prior to its actual consumption or other uses. Both the majority and concurring opinions hold that G-P Gypsum's taking of dominion or control over the gas was the taxable use. The concurring opinion's recognition that consumption or other uses may under certain circumstances be the first exercise of dominion and control may be important in a case with a nonowner user. Indeed, a nonowner may never exercise "dominion and control" over an item but still "use" the item and be subject to the use tax.

Tacoma manufacturing plant, [G-P] Gypsum could not ‘use’ it again within Tacoma’s city limits. Therefore, there was no taxable event for which Tacoma could impose and collect a use tax”³ under either the majority or concurring opinions.

B. The Department Now Claims That Use of Gas Is Limited to Burning or Storing Gas.

While in its Brief the Department avoided addressing whether the state’s use tax was imposed on the first act of dominion and control within the State,⁴ the Department previously admitted “taxpayer is correct that use tax is triggered by the first use of the goods in Washington.”⁵ Now, in a fiscal note to House Bill 1422, the Department claims that legislation which limits the definition of “use” for state and local gas use tax purposes to burning or storing “codifies current Department of Revenue interpretation of ‘use’” Appendix B.

The proposed legislation⁶ clearly changes the definition of “use”.

Appendix A. Yet, the Department admits the proposed amended

³ Concurring Opinion at 674.

⁴ Br. of Respondent at 18, n.12.

⁵ Ex. Plaintiff’s 2 (Department Determination issued to G-P Gypsum). When this matter was in the Appeals Division of the Department, the Department did not contend in any manner that the definition of use was any different than the definition applied by the Court of Appeals. See, Exs. Plaintiff’s 2 and 3 (Department’s Determination and Determination on Reconsideration).

⁶ As the legislation is only proposed, G-P Gypsum does not brief the effect of the legislation. Please note, however, the current Legislature cannot construe the intent of prior legislatures. See, *Marine Power v. Human Rights Comm’n*. 39 Wn. App. 609, 694

definition is its current interpretation. That is why the Department disagrees with the Court of Appeals decision. The Department's current interpretation is simply contrary to current law.

Current law includes within the meaning of "use" the first taking of dominion and control. RCW 82.12.010. See also, Appendix A. G-P Gypsum first assumed dominion and control over the gas outside Tacoma. CP 174-175. Thus, Tacoma cannot tax G-P Gypsum's use of the gas.

**C. The Commerce Clause Requires The Use Tax To Be
Imposed On the First Act By Which A Taxpayer Assumes Dominion
or Control.**

The generally applicable use tax facially discriminates against interstate commerce. That is, it is imposed when a buyer uses an item

P.2d 697 (1995). Moreover, for the reasons discussed in Section C the House Bill violates the commerce clause. To the extent it attempts to impose any tax retroactively for periods prior to the date of the Court of Appeals decision, the bill would also violate the due process and equal protection clauses of the U.S. Constitution. See generally, *Gillis v. King County*, 42 Wn.2d 373, 376, 255 P.2d 546 (1953) (statute will not be given retroactive effect regardless of legislative intent if to do so would interfere with a vested right), and see, *Landgraf v. USI Film Productions*, 511 U.S. 244, 265-69 (1994) and *Bates v. McLeod*, 11 Wn.2d 648, 656-57 (1941). To the extent the bill would effect the outcome of this case, it violates the Washington State Constitution as an improper infringement of the Legislature on this Court's authority. *American Discount Corp. v. Shepherd*, 129 Wn. App. 345, 354-56 (2005) (Legislative retroactive overriding of a judicial decision violates the doctrine of separation of powers and would allow the Legislature to become a court of last resort.); see also, *In Re: Personal Restraint of Stewart*, 115 Wn. App. 319, 333-39 (2003). If prior to the decision in this case, House Bill 1422 becomes law, we would welcome an opportunity to further brief these issues.

locally that it bought outside Washington, but the use tax is not imposed when the buyer uses an item locally that it bought in Washington.⁷

Such a facially discriminatory tax may be permitted if the use tax imposed on interstate commerce compensates for the lack of a different tax being imposed on intrastate commerce. *Associated Industries of Missouri v. Lohman*, 511 U.S. 641 (1994). For two taxes to be compensatory, they must be imposed on “substantially equivalent events.” *Id.* See also, *Maryland v. Louisiana*, 451 U.S. 725, 759 (1981) and see, *Armco, Inc. v. Hardesty*, 467 U.S. 638, 643 (1984). In addition, the total tax burden on interstate commerce cannot be greater than the total tax burden on intrastate commerce. *Henneford v. Silas Mason*, 300 U.S. 577, 584 (1937). See also, *Armco*, at 642; *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 331 (1977); *Maryland v. Louisiana*, at 759 and *Tyler Pipe Industries v. Department of Revenue*, 483 U.S. 232, 243 (1987).

In a case upholding Washington’s generally applicable use tax, the United States Supreme Court determined that the sales and use tax were compensatory taxes. *Henneford v. Silas Mason*, 300 U.S. 577 (1937). The taxes were imposed on substantially equivalent events. That is, the sales tax was imposed on a purchase and the use tax was imposed on use

⁷ RCW 82.12.020(3) provides that the use tax does not apply to the use of any item if the sale thereof to the present user has already been subject to the sales tax.

which was defined to include the first taking of dominion and control. *Henneford v. Silas Mason*, at 583-584.⁸ As the first taking of dominion and control occurs at the same moment in time by the same person as the purchase, sales and use are substantially equivalent. As the sales and use taxes are imposed on the same person, at the same time, at the same rate and measure, the taxes impose equivalent burdens, are compensatory and are constitutional. *See, Id.*

The gas use tax also facially discriminates against interstate commerce. The gas use tax is imposed when a local user buys gas outside the state but the gas use tax is not imposed when the local user buys from the local public utility in state.⁹ Again, such a facially discriminatory tax may be permitted if the gas use tax imposed on interstate commerce compensates for the lack of a different tax being imposed on intrastate commerce. Again, for two taxes to be compensatory they must be imposed on “substantially equivalent events” and the total tax burden on interstate commerce cannot be greater than the total tax burden on intrastate commerce.

If the Department was correct and use was defined as burning or storing but not the first act by which the taxpayer takes dominion or

⁸ In fact, the use tax was challenged as being imposed on the delivery. *Id.*

⁹ *See*, RCW 82.12.022(4) (Gas sold by a person who paid the public utility tax under RCW 82.16 is exempt from the gas use tax).

control over gas, the gas use tax would not compensate for any other tax. Thus, its facially discriminatory nature would violate the commerce clause.

The reason the gas use tax would not be deemed to be a compensatory tax if use was limited in meaning to burning or storing (as currently contended by the Department) is no state tax is paid by local commerce on an event substantially equivalent to the burning or storing of gas. The fact that sellers of gas locally may pay the public utility tax would not save the gas use tax if use was limited in meaning to burning or storing (as currently contended by the Department) because operating a public utility (the privilege taxed under the public utility tax) or selling gas (the event on which the public utility tax is imposed) is not substantially equivalent to burning or storing of gas. The public utility tax and the gas use taxes are not imposed on the same person; they would not be imposed at the same time; they would not necessarily be imposed on the same measure. Indeed, we are unaware of any taxes ever being approved as compensatory by the United States Supreme Court except for the generally applicable sales and use taxes.¹⁰ Thus, if the Department were correct, the state and local gas use taxes would be unconstitutional.¹¹

¹⁰ This fact may raise concerns about the constitutionality of the current gas use tax, but it -- as interpreted by the Court of Appeals -- has the benefits of necessarily being imposed at the same time, at the same rate and the same measure as the public utility tax. G-P

III. Conclusion

For the reasons expressed above, the Court of Appeals decision in this matter should be affirmed.

Respectfully submitted, this 6th day of April, 2009.

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By 

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Gypsum did not buy its gas outside the State. Therefore, it does not raise any commerce clause objection except as to the DOR's current interpretation of the term "use".

¹¹ If the Court of Appeals is sustained on statutory grounds, there is no reason to reach the constitutional issue.

Appendix A

House Bill 1422

HOUSE BILL 1422

State of Washington 61st Legislature 2009 Regular Session

By Representatives Conway, Hasegawa, Springer, Santos, and Kenney

Read first time 01/21/09. Referred to Committee on Finance.

1 AN ACT Relating to the taxation of brokered natural gas and
2 manufactured gas; amending RCW 82.12.010 and 82.14.230; and creating a
3 new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 Sec. 1. RCW 82.12.010 and 2006 c 301 s 3 are each amended to read
6 as follows:
7 For the purposes of this chapter:

8 (1) "Purchase price" means the same as sales price as defined in
9 RCW 82.08.010.

10 (2)(a) "Value of the article used" shall be the purchase price for
11 the article of tangible personal property, the use of which is taxable
12 under this chapter. The term also includes, in addition to the
13 purchase price, the amount of any tariff or duty paid with respect to
14 the importation of the article used. In case the article used is
15 acquired by lease or by gift or is extracted, produced, or manufactured
16 by the person using the same or is sold under conditions wherein the
17 purchase price does not represent the true value thereof, the value of
18 the article used shall be determined as nearly as possible according to

1 the retail selling price at place of use of similar products of like
2 quality and character under such rules as the department may prescribe.

3 (b) In case the articles used are acquired by bailment, the value
4 of the use of the articles so used shall be in an amount representing
5 a reasonable rental for the use of the articles so bailed, determined
6 as nearly as possible according to the value of such use at the places
7 of use of similar products of like quality and character under such
8 rules as the department of revenue may prescribe. In case any such
9 articles of tangible personal property are used in respect to the
10 construction, repairing, decorating, or improving of, and which become
11 or are to become an ingredient or component of, new or existing
12 buildings or other structures under, upon, or above real property of or
13 for the United States, any instrumentality thereof, or a county or city
14 housing authority created pursuant to chapter 35.82 RCW, including the
15 installing or attaching of any such articles therein or thereto,
16 whether or not such personal property becomes a part of the realty by
17 virtue of installation, then the value of the use of such articles so
18 used shall be determined according to the retail selling price of such
19 articles, or in the absence of such a selling price, as nearly as
20 possible according to the retail selling price at place of use of
21 similar products of like quality and character or, in the absence of
22 either of these selling price measures, such value may be determined
23 upon a cost basis, in any event under such rules as the department of
24 revenue may prescribe.

25 (c) In the case of articles owned by a user engaged in business
26 outside the state which are brought into the state for no more than one
27 hundred eighty days in any period of three hundred sixty-five
28 consecutive days and which are temporarily used for business purposes
29 by the person in this state, the value of the article used shall be an
30 amount representing a reasonable rental for the use of the articles,
31 unless the person has paid tax under this chapter or chapter 82.08 RCW
32 upon the full value of the article used, as defined in (a) of this
33 subsection.

34 (d) In the case of articles manufactured or produced by the user
35 and used in the manufacture or production of products sold or to be
36 sold to the department of defense of the United States, the value of
37 the articles used shall be determined according to the value of the
38 ingredients of such articles.

1 (e) In the case of an article manufactured or produced for purposes
2 of serving as a prototype for the development of a new or improved
3 product, the value of the article used shall be determined by: (1) The
4 retail selling price of such new or improved product when first offered
5 for sale; or (11) the value of materials incorporated into the
6 prototype in cases in which the new or improved product is not offered
7 for sale.

8 (f) In the case of an article purchased with a direct pay permit
9 under RCW 82.32.087, the value of the article used shall be determined
10 by the purchase price of such article if, but for the use of the direct
11 pay permit, the transaction would have been subject to sales tax;

12 (3) "Value of the service used" means the purchase price for the
13 service, the use of which is taxable under this chapter. If the
14 service is received by gift or under conditions wherein the purchase
15 price does not represent the true value thereof, the value of the
16 service used shall be determined as nearly as possible according to the
17 retail selling price at place of use of similar services of like
18 quality and character under rules the department may prescribe;

19 (4) "Value of the extended warranty used" means the purchase price
20 for the extended warranty, the use of which is taxable under this
21 chapter. If the extended warranty is received by gift or under
22 conditions wherein the purchase price does not represent the true value
23 of the extended warranty, the value of the extended warranty used shall
24 be determined as nearly as possible according to the retail selling
25 price at place of use of similar extended warranties of like quality
26 and character under rules the department may prescribe;

27 (5) "Use," "used," "using," or "put to use" shall have their
28 ordinary meaning, and shall mean:

29 (a) With respect to tangible personal property, ~~except for natural~~
30 ~~gas, and manufactured gas, the first act within this state by which the~~
31 taxpayer takes or assumes dominion or control over the article of
32 tangible personal property (as a consumer), and include installation,
33 storage, withdrawal from storage, distribution, or any other act
34 preparatory to subsequent actual use or consumption within this state;
35 (b) With respect to a service defined in RCW 82.04.050(2) (a), the
36 first act within this state after the service has been performed by
37 which the taxpayer takes or assumes dominion or control over the
38 article of tangible personal property upon which the service was

1 performed (as a consumer), and includes installation, storage,
2 withdrawal from storage, distribution, or any other act preparatory to
3 subsequent actual use or consumption of the article within this state;
4 (enact)

5 (c) With respect to an extended warranty, the first act within this
6 state after the extended warranty has been acquired by which the
7 taxpayer takes or assumes dominion or control over the article of
8 tangible personal property to which the extended warranty applies, and
9 includes installation, storage, withdrawal from storage, distribution,
10 or any other act preparatory to subsequent actual use or consumption of
11 the article within this state; and

12 (d) With respect to natural gas or manufactured gas, the use of
13 which is taxable under RCW 82.12.022, including gas that is also
14 taxable under the authority of RCW 82.14.230, the first act within this
15 state by which the taxpayer consumes the gas by burning the gas or
16 storing the gas in the taxpayer's own facilities for later consumption
17 by the taxpayer;

18 (6) "Taxpayer" and "purchaser" include all persons included within
19 the meaning of the word "buyer" and the word "consumer" as defined in
20 chapters 82.04 and 82.08 RCW;

21 (7) (a) (i) Except as provided in (a) (ii) of this subsection (7),
22 "retailer" means every seller as defined in RCW 82.08.010 and every
23 person engaged in the business of selling tangible personal property at
24 retail and every person required to collect from purchasers the tax
25 imposed under this chapter.

26 (ii) "Retailer" does not include a professional employer
27 organization when a covered employee coemployed with the client under
28 the terms of a professional employer agreement engages in activities
29 that constitute a sale of tangible personal property, extended
30 warranty, or a sale of any service defined as a retail sale in RCW
31 82.04.050 (2) (a) or (3) (a) that is subject to the tax imposed by this
32 chapter. In such cases, the client, and not the professional employer
33 organization, is deemed to be the retailer and is responsible for
34 collecting and remitting the tax imposed by this chapter.

35 (b) For the purposes of (a) of this subsection, the terms "client,"
36 "covered employee," "professional employer agreement," and
37 "professional employer organization" have the same meanings as in RCW
38 82.04.540;

1 (8) "Extended warranty" has the same meaning as in RCW
2 82.04.050 (7) ;

3 (9) The meaning ascribed to words and phrases in chapters 82.04 and
4 82.08 RCW, insofar as applicable, shall have full force and effect with
5 respect to taxes imposed under the provisions of this chapter.
6 "Consumer," in addition to the meaning ascribed to it in chapters 82.04
7 and 82.08 RCW insofar as applicable, shall also mean any person who
8 distributes or displays, or causes to be distributed or displayed, any
9 article of tangible personal property, except newspapers, the primary
10 purpose of which is to promote the sale of products or services. With
11 respect to property distributed to persons within this state by a
12 consumer as defined in this subsection (9), the use of the property
13 shall be deemed to be by such consumer.

14 **Sec. 2.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read
15 as follows:

16 (1) The governing body of any city, while not required by
17 legislative mandate to do so, may, by resolution or ordinance for the
18 purposes authorized by this chapter, fix and impose on every person a
19 use tax for the privilege of using natural gas or manufactured gas in
20 the city as a consumer.

21 (2) The tax shall be imposed in an amount equal to the value of the
22 article used by the taxpayer multiplied by the rate in effect for the
23 tax on natural gas businesses under RCW 35.21.870 in the city in which
24 the article is used. The "value of the article used," does not include
25 any amounts that are paid for the hire or use of a natural gas business
26 in transporting the gas subject to tax under this subsection if those
27 amounts are subject to tax under RCW 35.21.870.

28 (3) The tax imposed under this section shall not apply to the use
29 of natural or manufactured gas if the person who sold the gas to the
30 consumer has paid a tax under RCW 35.21.870 with respect to the gas for
31 which exemption is sought under this subsection.

32 (4) There shall be a credit against the tax levied under this
33 section in an amount equal to any tax paid by:

34 (a) The person who sold the gas to the consumer when that tax is a
35 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
36 another ~~((state))~~ municipality or other unit of local government with

1 respect to the gas for which a credit is sought under this subsection;
2 or

3 (b) The person consuming the gas upon which a use tax similar to
4 the tax imposed by this section was paid to another ~~((state))~~
5 municipality or other unit of local government with respect to the gas
6 for which a credit is sought under this subsection.

7 (5) The use tax hereby imposed shall be paid by the consumer. The
8 administration and collection of the tax hereby imposed shall be
9 pursuant to RCW 82.14.050.

10 **NEW SECTION. Sec. 3.** The provisions of this act apply both
11 prospectively and retroactively to use taxes due pursuant to RCW
12 82.14.230.

--- END ---

Appendix B

Department of Revenue Fiscal Note to HB 1422

Department of Revenue Fiscal Note

Bill Number: 1422 HB	Title: Taxation of brokered gas	Agency: 140-Department of Revenue
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Part I: Estimates

☐ No Fiscal Impact

Estimated Cash Receipts to:

FUND					
Total \$					

Estimated Expenditures from:

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.1		0.0		
Fund					
GF-STATE-State 001-1	8,200		8,200		
Total \$	8,200		8,200		

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

- ☐ If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.
- ☒ If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).
- ☐ Capital budget impact, complete Part IV.
- ☒ Requires new rule making, complete Part V.

Legislative Contact: Monica Jenkins	Phone: 360-902-0561	Date: 02/02/2009
Agency Preparation: Ray Philen	Phone: 360-570-6078	Date: 02/04/2009
Agency Approval: Don Gutmann	Phone: 360-570-6073	Date: 02/04/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 02/04/2009

Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe, by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Defines use of natural gas or manufactured gas to be the first act within this state by which the taxpayer consumes the gas by burning the gas or stores the gas in the taxpayer's own facilities for later consumption by the taxpayer.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

This legislation codifies current Department of Revenue interpretation of "use," "used," "using," or "put to use" with respect to natural gas and as such has no revenue impact.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing

To implement this legislation, the Department of Revenue (Department) will incur costs of approximately \$8,200 in Fiscal Year 2010. These costs are for amendment of one administrative rule.

Part III: Expenditure Detail

III. A - Expenditures by Object Or Purpose

	FY 2010	FY 2011	2009-11	2011-13	2013-15
FTE Staff Years	0.1		0.0		
A-Salaries and Wages	4,800		4,800		
B-Employee Benefits	1,200		1,200		
E-Goods and Services	1,700		1,700		
J-Capital Outlays	500		500		
Total \$	\$8,200		\$8,200		

III. B - Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2010	FY 2011	2009-11	2011-13	2013-15
HEARINGS SCHEDULER	32,688	0.0		0.0		
TAX POLICY SP 2	61,628	0.0		0.0		
TAX POLICY SP 3	69,756	0.1		0.0		
WMS BAND 3	88,546	0.0		0.0		
Total FTE's		0.1		0.1		

Part IV: Capital Budget Impact

NONE.

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Should this legislation become law, the Department will use the standard process to amend WAC 458-20-17902, Brokered natural gas - Use tax. Persons affected by this rule-making would include those persons using natural gas or manufactured gas who have not paid the public utility tax.

LOCAL GOVERNMENT FISCAL NOTE

Department of Community, Trade and Economic Development

Bill Number: 1422 HB

Title: Taxation of brokered gas

Part I: Jurisdiction-Location, type or status of political subdivision defines range of fiscal impacts.

Legislation Impacts:

- ☐ Cities:
- ☐ Counties:
- ☐ Special Districts:
- ☐ Specific jurisdictions only:
- ☐ Variance occurs due to:

Part II: Estimates

- ☒ No fiscal impacts.
- ☐ Expenditures represent one-time costs:
- ☐ Legislation provides local option:
- ☐ Key variables cannot be estimated with certainty at this time:

Part III: Preparation and Approval

Fiscal Note Analyst: Darleen Muhly	Phone: (360) 725 5030	Date: 02/04/2009
Leg. Committee Contact: Monica Jenkins	Phone: 360-902-0561	Date: 02/02/2009
Agency Approval: Steve Salmi	Phone: (360) 725 5034	Date: 02/04/2009
OFM Review: Ryan Black	Phone: 360-902-0417	Date: 02/04/2009

Part IV: Analysis

A. SUMMARY OF BILL

Provide a clear, succinct description of the bill with an emphasis on how it impacts local government.

This bill would define, for purposes of the sales and use tax and the optional city-imposed use tax, the use of natural gas or manufactured gas to be the first act within this state by which the taxpayer consumes the gas by burning the gas or storing the gas in the taxpayer's own facilities for later consumption by the taxpayer.

B. SUMMARY OF EXPENDITURE IMPACTS

Briefly describe and quantify the expenditure impacts of the legislation on local governments, identifying the expenditure provisions by section number, and when appropriate, the detail of expenditures. Delineate between city, county and special district impacts.

No expenditure impact is expected as a result of this proposed legislation

C. SUMMARY OF REVENUE IMPACTS

Briefly describe and quantify the revenue impacts of the legislation on local governments, identifying the revenue provisions by section number, and when appropriate, the detail of revenue sources. Delineate between city, county and special district impacts.

According to the Department of Revenue fiscal note, this bill codifies their current interpretation of "use," "used," "using," or "put to use" with respect to natural gas. Therefore, no revenue impact is expected as a result of this proposed legislation.

SOURCES:

Department of Revenue fiscal note

Appendix C

Certificate of Service

Certificate of Service

I, Franklin G. Dinces, do hereby certify that on this the 6th day of April 2009, I placed in the United States mail, postage prepaid, a copy of the Supplemental Brief of Respondent – G-P Gypsum Corporation, addressed to:

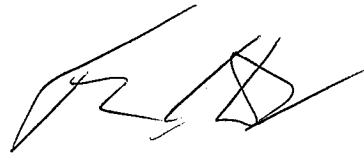
Peter Gonick, Assistant Attorney General
Attorney General's Office – Revenue Division
7141 Cleanwater Drive SW
PO Box 40123
Olympia, WA 98504-0123

Debra Casparian
Tacoma City Attorney's Office
747 Market St., Rm. 1120
Tacoma, WA 98402

Kent Meyer
Assistant City Attorney
Seattle City Attorney's Office
6000 4th Avenue, 4th Fl.
PO Box 94769
Seattle, WA 98124-4769

And to:

Sheila Gall
Association of Washington Cities
1076 Franklin St.
Olympia, WA 98501-1346



Franklin G. Dinces